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MAR 09 2005

In re Application of:
Toru Takayama et al.
Serial No.: 09/598,736
Filed: June 21, 2000
Attorney Docket No.: **SEL 189**

DECISION ON PETITION
TO WITHDRAW HOLDING
OF ABANDONMENT

This is a decision on the petition filed August 2, 2004. The petition has been treated as a petition under 37 C.F.R. § 1.181 to withdraw the holding of abandonment in the above-identified application. No fee is required.

The petition is **GRANTED**.

The application was held abandoned for failure to timely file a response to the Office action mailed on October 17, 2003. A Notice of Abandonment was mailed on July 13, 2004.

Petitioner asserts that the Office action mailed on October 17, 2003 was not received. To support this assertion, petitioner provided a statement attesting that a search of the file jacket and docket records showed that the Office action was not received.

A review of the written record indicates that the Office action may not have been actually mailed with the United States Postal Service since both signed copies of the Office action are still in the file.

The Notice of Abandonment is hereby vacated and the holding of abandonment is withdrawn. The application file is being forwarded to the Technology Center 2800 support staff for remailing the Office action. The shortened statutory period for response set therein will be reset to run from the date the Office action is remailed. Extensions of time are available under 37 CFR § 1.136.

Petitioner also asserts that the fees for this petition should be refunded since failure to receive the Office action mailed October 17, 2003 was not due any fault by applicant.

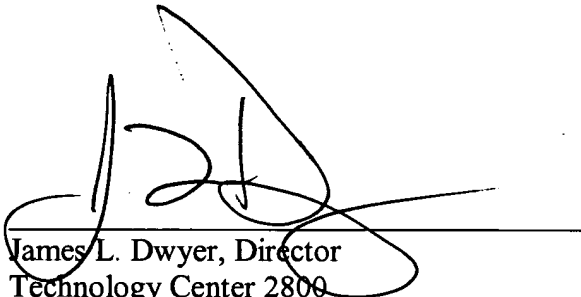
Authorization to refund fees is set forth under 37 CFR 1.26. 37 CFR 1.26(a) states, in part, as follows:

(a) The Director may refund any fee paid by mistake or in excess of that required. A change of purpose after the payment of a fee, such as when a party desires to withdraw a patent filing for which the fee was paid, including an application, an appeal, or a request for an oral hearing, will not entitle a party to a refund of such fee.

Since a petition under 37 C.F.R. § 1.181(a) requesting withdrawal of abandonment does not require a fee, this petition fee was paid by mistake.

Petitioner's request for a refund is **GRANTED**.

An inquiry regarding this decision should be directed to Clayton E. LaBalle, Special Program Examiner, at (571) 272-1594.



James L. Dwyer, Director
Technology Center 2800
Semiconductors, Electrical and Optical
Systems and Components